

## Message Text

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ORIGIN DLOS-09

INFO OCT-01 ISO-00 OES-07 NSF-01 DODE-00 SIG-01 MMO-01  
AF-10 ARA-06 EA-07 EUR-12 NEA-10 IO-13 FEA-01  
AGR-05 ACDA-07 AID-05 CEA-01 CEQ-01 CG-00 CIAE-00  
EPG-02 COME-00 DOTE-00 EB-07 EPA-01 ERDA-05  
FMC-01 TRSE-00 H-01 INR-07 INT-05 JUSE-00 L-03  
NSAE-00 NSC-05 OMB-01 PA-01 PM-04 PRS-01 SP-02  
SS-15 USIA-06 OIC-02 /167 R

DRAFTED BY D/LOS:RBLUMBERG:AFR  
APPROVED BY S/AR:AMBASSADOR RICHARDSON  
D/LOS:FSMHODSOLL  
L/OES:TLEITZELL  
OES/OFA:GDALTON  
NSF:NWULF  
DOD:MGOODWEATHER (SUBS)  
D/LOS:GTAFT

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R 201615Z MAY 77  
FM SECSTATE WASHDC  
TO ALL DIPLOMATIC POSTS

C O N F I D E N T I A L STATE 116631

E.O. 11652:GDS

TAGS: PLOS

SUBJECT:LOS: MARINE SCIENTIFIC RESEARCH

1. BACKGROUND: THE QUESTION OF MAXIMIZING FREEDOM OF  
MARINE SCIENTIFIC RESEARCH (MSR) IN THE ECONOMIC ZONE  
(EZ) AND ON THE CONTINENTAL SHELF IS ONE OF THE MAJOR  
REMAINING ISSUES FACING THE LAW OF THE SEA CONFERENCE.  
MOST DEVELOPING COUNTRIES ARE SEEKING TOTAL CONTROL  
OVER MSR IN THE EZ WHILE DEVELOPED COUNTRIES SEEK TO  
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MAXIMIZE FREEDOM OF SUCH RESEARCH. THE U.S. BELIEVES  
THAT MSR IN THE EZ IS ESSENTIAL FOR A BETTER UNDER-  
STANDING OF THE OCEANS. THE 200 MILE ECONOMIC ZONES  
ARE IMPORTANT FOR MARINE SCIENTIFIC RESEARCH BECAUSE  
THEY ARE THE AREAS OF MAJOR OCEAN CURRENTS, THE REGION  
WHERE ALMOST 90 PERCENT OF OCEANIC BIOLOGICAL ACTIVITY  
OCCURS, WHERE THE INTERACTION OF ATMOSPHERE AND OCEAN IN

DETERMINING CLIMATE IS MOST EFFECTIVE, WHERE MOST OF THE WORLD'S UNDERSEA EARTHQUAKES OCCUR, AND THE AREAS OF GREATEST IMPORTANCE IN DETERMINING THE HISTORY OF THE EARTH. DEVELOPING COUNTRIES BELIEVE SUCH MSR COULD ADVERSELY AFFECT THEIR INTERESTS--RESOURCE, SECURITY, ETC.

2. UNDER PRESENT INTERNATIONAL LAW FREEDOM TO CONDUCT

MARINE SCIENTIFIC RESEARCH BEYOND THE TERRITORIAL SEA IS A TRADITIONAL HIGH SEAS FREEDOM. THE 1958 GENEVA CONVENTION ON THE CONTINENTAL SHELF QUALIFIED THAT FREEDOM BY REQUIRING COASTAL STATE CONSENT FOR ANY RESEARCH CONCERNING THE SHELF AND UNDERTAKEN THERE. SCIENTIFIC INTERESTS WERE TO BE PROTECTED BY THE PROVISION IN THE CONVENTION THAT THE COASTAL STATE WOULD NOT NORMALLY WITHHOLD ITS CONSENT. UNFORTUNATELY, EXPERIENCE HAS SHOWN THAT THIS PROVISION PROVIDES VIRTUALLY NO PROTECTION FOR SCIENCE SINCE INCREASING NUMBERS OF COASTAL STATES HAVE REFUSED CONSENT, FAILED TO RESPOND TO A REQUEST FOR CONSENT OR IMPOSED PRE-CONDITIONS FOR CONSENT THAT ARE SO UNREASONABLE THE RESEARCH MUST BE ABANDONED.

3. TO EXTEND THE CONSENT REQUIREMENT TO ALL RESEARCH WITHIN 200 MILES WOULD ELIMINATE FREEDOM OF SCIENTIFIC RESEARCH IN 36 PERCENT OF THE WORLD'S OCEAN AREA. EIGHTY PERCENT OF U.S. MARINE RESEARCH IS CONDUCTED WITHIN THIS AREA BECAUSE OF ITS SPECIAL CHARACTERISTICS

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AND ITS PARTICULAR IMPORTANCE TO MAN.

4. THE U.S. HAS PROPOSED AN APPROACH WHICH WOULD PROTECT COASTAL STATE INTERESTS BY (I) IMPOSING A SERIES OF REQUIREMENTS ON THE RESEARCHER WITH RESPECT TO ALL RESEARCH CONDUCTED IN ECONOMIC ZONES AND ON THE SHELF, AND (II) SUBJECTING CERTAIN KINDS OF RESEARCH TO THE COASTAL STATE'S CONSENT. THE REQUIREMENTS INCLUDE ADVANCE NOTIFICATION TO THE COASTAL STATE; A RIGHT FOR COASTAL STATE SCIENTISTS TO PARTICIPATE IN THE RESEARCH PROJECT; SHARING OF DATA AND SAMPLES; AND ASSISTANCE TO THE COASTAL STATES IN INTERPRETING THE RESEARCH RESULTS. THE COASTAL STATE WOULD HAVE THE RIGHT TO STOP THE PROJECT IF THE REQUIREMENTS HAVE NOT BEEN FULFILLED. THE CATEGORIES OF RESEARCH WITH RESPECT TO WHICH CONSENT WOULD BE REQUIRED ARE RESEARCH (A) BEARING SUBSTANTIALLY ON RESOURCE EXPLORATION AND EXPLOITATION, (B) INVOLVING DRILLING OR EXPLOSIVES, AND (C) USING INSTALLATIONS UNDER COASTAL

STATE JURISDICTION. TO PROVIDE PREDICTABILITY IN THE PLANNING AND CONDUCT OF THE PROPOSED RESEARCH, THE PROJECT COULD PROCEED AFTER A SPECIFIED PERIOD FOLLOWING NOTIFICATION UNLESS THE COASTAL STATE EXERCISES THE RIGHT TO OBJECT OR WITHHOLD CONSENT. ALL DISPUTES REGARDING SCIENTIFIC RESEARCH WOULD BE SUBJECT TO BINDING THIRD PARTY DISPUTE SETTLEMENT.

5. STATUS OF NEGOTIATIONS - RSNT PART III

THE PROVISIONS OF THE REVISED SINGLE NEGOTIATING TEXT (RSNT) DEALING WITH SCIENTIFIC RESEARCH IN THE ECONOMIC ZONE ARE NOT ACCEPTABLE. THEY NOT ONLY REQUIRE COMPLIANCE WITH THE REQUIREMENTS LISTED ABOVE FOR ALL MSR (ARTICLES 58-59) BUT ALSO REQUIRE CONSENT FOR ALL MSR (ARTICLE 60). THE TEXT DOES PROVIDE THAT CONSENT SHALL NOT BE WITHHELD EXCEPT FOR SPECIFIED TYPES OF RESEARCH, BUT CERTAIN OF THESE CATEGORIES ARE SO CONFIDENTIAL

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BROADLY STATED AS TO GIVE THE COASTAL STATE ALMOST TOTAL DISCRETION TO WITHHOLD CONSENT. FOR EXAMPLE ARTICLE 60 (2) (C) PROVIDES THAT THE CONSENT MAY BE WITHHELD FOR A RESEARCH PROJECT THAT UNDULY INTERFERES WITH THE COASTAL STATES ECONOMIC ACTIVITIES. IN ADDITION TO THE COASTAL STATE RIGHT TO DIRECTLY DENY CONSENT THE COASTAL STATE CAN ALSO EFFECTIVELY ACCOMPLISH THE SAME RESULT BY FAILING TO RESPOND TO A RESEARCH REQUEST OR BY CONTINUALLY REQUESTING FURTHER INFORMATION (ARTICLE 64). THE RSNT ALSO AUTHORIZES A COASTAL STATE TO STOP A RESEARCH PROJECT ALREADY UNDERWAY FOR A VARIETY OF REASONS (ARTICLE 65). THIS DENIES THE RESEARCHER THE NECESSARY AND REASONABLE ASSURANCE THAT HE CAN COMPLETE A RESEARCH PROJECT. ALSO, THE RSNT PLACES RESTRICTIONS ON THE PUBLICATION AND DISSEMINATION OF RESEARCH RESULTS AND FINDINGS (ARTICLE 61). SUCH RESTRICTIONS WILL DENY OTHER SCIENTISTS AND THE WORLD COMMUNITY THE BENEFIT OF INCREASED SCIENTIFIC KNOWLEDGE.

6. TALKING POINTS

--ALL NATIONS BENEFIT FROM GREATER UNDERSTANDING OF THE OCEANS AND OCEANIC PROCESSES OBTAINED FROM MARINE SCIENTIFIC RESEARCH. MARINE RESEARCH IN THE EZ IS CRITICAL TO THE UNDERSTANDING OF WEATHER AND THE GLOBAL PROBLEM OF MARINE POLLUTION.

--A REGIME SHOULD BE SOUGHT THAT ENCOURAGES MARINE RESEARCH RATHER THAN ONE THAT CREATES FURTHER IMPEDIMENTS IN VAST AREAS OF THE OCEANS. SUCH A REGIME SHOULD GUARANTEE RESEARCHERS REASONABLE ACCESS FOR

THE CONDUCT OF MARINE SCIENTIFIC RESEARCH AND PREDI-  
CABILITY IN PLANNING RESEARCH PROJECTS.

--COASTAL STATE CONCERNS CAN BE PROTECTED THROUGH A  
SERIES OF TREATY OBLIGATIONS ACCEPTED BY RESEARCHERS  
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AND THESE OBLIGATIONS CAN INSURE THAT INDIVIDUAL  
COASTAL STATES WILL BENEFIT FROM RESEARCH OFF THEIR  
COASTS.

--AT THE SAME TIME THE U.S. CAN AGREE TO A REGIME WHICH  
PROVIDES FOR COASTAL STATE CONSENT FOR CERTAIN CLEARLY  
DEFINED AND LIMITED TYPES OF RESEARCH IN THE EEZ, BUT  
WE CAN NOT ACCEPT ONE THAT EMBODIES COMPLETE DISCRETIONARY  
COASTAL STATE CONSENT.

--THE RSNT AS CURRENTLY DRAFTED IS UNACCEPTABLE BUT THE  
U.S. WILL CONTINUE TO SEEK AN ACCOMMODATION WHICH  
PROTECTS THE RIGHTS OF RESEARCHERS AND THE LEGITIMATE  
INTERESTS OF THE COASTAL STATE.

7. GUIDANCE: EMBASSIES SHOULD SEEK SUPPORT FOR THE  
CONCEPTS BEHIND THE U.S. PROPOSALS AND STRESS THAT  
ALL NATIONS BENEFIT FROM GREATER UNDERSTANDING OF THE  
OCEANS AND OCEANIC PROCESSES OBTAINED FROM MARINE  
SCIENTIFIC RESEARCH. A REGIME THAT ENCOURAGES  
MARINE RESEARCH SHOULD BE SOUGHT, RATHER THAN ONE  
THAT CREATES FURTHER IMPEDIMENTS. POSTS SHOULD USE  
TEXT OF CABLE AS TALKING POINTS AND MAY GIVE COPIES  
TO APPROPRIATE HOST GOVERNMENT OFFICIALS.

8. FOR KENYA, EGYPT, IRAQ, SINGAPORE, NEW ZEALAND,  
PERU, BRAZIL, ARGENTINA, COLOMBIA, TRINIDAD AND  
TOBAGO, JAMAICA, CHILE, SPAIN, FINLAND, FEDERAL REPUBLIC  
OF GERMANY, NETHERLANDS, DENMARK, SWEDEN, AND JAPAN  
AS CHAIRMAN OF THE ASIAN GROUP, NICARAGUA AS CHAIRMAN  
OF THE LATIN AMERICAN GROUP, POLAND AS CHAIRMAN OF  
THE EASTERN EUROPEAN GROUP, UNITED KINGDOM AS CHAIRMAN  
OF THE WESTERN EUROPEAN GROUP, AND SENEGAL AS PROBABLE  
CHAIRMAN OF THE AFRICAN GROUP: EMBASSIES SHOULD  
NOTIFY HOST GOVERNMENT THAT THEIR LAW OF THE SEA  
DELEGATION LEADERS WILL BE RECEIVING A PERSONAL  
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LETTER FROM AMBASSADOR ELLIOT L. RICHARDSON CONCERNING

MARINE SCIENTIFIC RESEARCH. CHRISTOPHER

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## Message Attributes

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